

«Majority of the majority» and Prime Minister prepare to strike a deal

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The general pursuit of «constructive interaction» between the Cabinet and the parliament is about to culminate in a «cease-fire» agreement between the two branches. While the government's expected annual report to the Rada appears to be a key political development of the forthcoming weeks, the impression does not reflect reality in full. The real «special relationship» between the two branches is based a number of significant political factors, each of which deserves a separate closer look.

First, the issue of forming a coalition government, enthusiastically discussed by politicians and observers throughout recent weeks, has gradually moved to the side of the political mainstream. Second, the dilemma of the government-parliament agreement reflects the problems that have been undermining the parliamentary majority. Third, the key say in the matter of concluding (failure to conclude) the deal between the majority and the Cabinet will belong to President Kuchma. Fourth, on April 17 the government will have to report to the parliament on the progress made since the adoption of the Program of Action last year, but the report itself will hardly change the government's chances to survive. In this context, given the fact that a number of influential factions are not particularly fond about what the Yushchenko government is doing, the idea of signing a deal with the parliament appears to be a sort of political insurance for the government. The government's recent «peacemaking» proposals that could be traded for political guarantees look quite symptomatic. According to Vice Speaker of the parliament Stepan Hawrysh, the current draft of the agreement between the parliament and the government suggests that the Rada will support the Cabinet's activities till march 2002. However, the majority's coordination council rejected the government's request to substitute the word «support» with «guarantee», as far as the government's actions are concerned. The majority explained its decision by the claim that the government's request contradicted the Constitution, the Verkhovna Rada's protocol and other pieces of legislation. According to Hawrysh, the formulation of «support» means that the parliament undertakes «certain political mutual obligations with the government» (UNIAN, April 2, 2001). However, despite some nuances of the political lexicon, nowadays it looks like the Yushchenko government is likely to survive. As Victor Yushchenko put it, «we will salute any parliamentary majority; the government sticks to the only position: it is possible to continue to work constructively during the next 11 months only within the current configuration in the parliament. But it is necessary for that to formalize the relations between the Cabinet and the majority» (Uriadovyi Kurier, April 6, 2001). Besides, the parliamentary elections are due in 11 months - if they take place as scheduled and not earlier. Meanwhile, the process of «formalizing the relations» appears to be rather problematic.

Given all the ingredients of the process of negotiation and finally signing the agreement, the document is bound to be primarily a political step, and any changes in the text reflect political considerations. The «editing» of the text is far from the sphere of phraseology. The process reflects a rather strong political style, in which every comma is determined by a number of various subjects in the parliament and outside who are involved in the process of «creating constructive interaction» with the government. Each of them seeks to see his/her own political interests reflected in the text of the would-be agreement.

Ukraine's recent history has seen a number of examples of agreements, memoranda and contracts between the branches of power. All of them vary due to developments and subjects involved. For instance, the idea of signing a deal between the branches of power was suggested - probably for the first time in that form - by President Leonid Kuchma in October 1994, shortly after his election. Then Kuchma's attention focused on two issues: formation of a government that would carry out the declared radical economic reform course and drafting a bill, described by Leonid Kuchma as «a constitutional law on power», i.e., the future Constitutional Agreement. The idea of the bill was formulated by President Kuchma on October 31, 1994, at a press conference on the occasion of his first 100 days as the President. He said he was prepared «for any compromise with the Verkhovna Rada except ...

reforms and the issue of the executive power» (SIT-30, October 31, 1994). Political struggle between the President and the parliament lasted for about a year, with the executive branch playing but a nominal role. On May 10, 1995, it was announced that Leonid Kuchma intended to sign the «Constitutional Agreement with the people's deputies who support his pro-reform course» (UTN, May 10, 1995). On June 7, 1995, the parliament voted 240 to 81 (with 8 abstentions and 20 MPs who did not vote) in favor of the Constitutional Agreement. Speaking to the parliament on that day, the President announced that «the adoption of the Constitutional Agreement is a necessary compromise in relations between the two branches of power. <...> I am sure that the deputies will make the right choice. <...> Civic consciousness, the feeling of responsibility to the people who have entrusted us with power, oblige us to be guided by the national interests, give up our partisan and narrow-partisan goals for the sake of the national interests. <...> Let us prove that we are worthy of the people's mission we have been given by the people and the state» (UTN, June 7, 1995).

The Constitutional Agreement was in force up to the adoption of the new Constitution in June 1996. Throughout that period the President ran the executive branch directly. He was in charge of issuing decrees that were mandatory for implementation, «provided their interpretation», «chaired the system of bodies of the state executive power», «as the head of the state executive power, exercised this power through the government under his leadership - the Cabinet of Ministers of Ukraine, and a system of central and local state executive bodies.» The Cabinet was defined as a «central collegial body of the state executive power, subordinated to the President of Ukraine and accountable to him». The subordination of the Cabinet to the President was legitimized by the stipulation that the President appointed, «within one month after taking office or since the resignation of the previous government <...> [or] the Prime Minister» and the formation of a new government. The President also became direct chief officer of local executive authorities. While the agreement provided that «heads of <...> state administrations, appointed by the President, <...> are individuals elected to [the positions of] chairmen of relevant regional, Kyiv and Sevastopol city and district councils», it also stipulated that «in cases of violation of the Constitution and laws of Ukraine, decrees and resolutions of the President, resolutions and sanctions of the government, heads of <...> state administrations may be dismissed early by the President of Ukraine.»

The adoption of the Constitutional Agreement meant introduction of new «rules of the game» for the branches of power. Further developments proved that the adoption of the agreement served only as a prelude to the new Constitution. Was the whole struggle over the adoption of the Constitutional Agreement all in vain? On the one hand, yes, for its adoption did not solve the problem of division of powers - at least given the temporary status of the document. On the other hand, it was a necessary action since it was the first one to fix the rigid power structure, responsibility of the legislature and the executive. In this context, another noteworthy document is the President's decree «The Issue of Interaction between the Administration of the President of Ukraine and the Apparatus of the Cabinet of Ministers of Ukraine», issued on February 7, 1996, and designed to ensure a certain degree of «mutual penetration» of activities of the Presidential Administration and the Cabinet staff, even to a certain degree of making the two bodies compliment each other, as the term «coordination», used in the document, suggested. Although the documents referred to the period before the adoption of the new Constitution, in fact the practice of existence of two parallel «Cabinets» remains. Given a number of reasons that originate from the provisions described above, it is the Administration that proves to be far more influential than the government nowadays.

The currently debated idea about signing a memorandum (an agreement) between the government and the parliamentary majority for solidarity responsibility for the implementation of the reform and creating a legal framework for that process first emerged a year ago, when the parliament debated the new Yushchenko government's Program of Action, «Reforms for Well-Being». Although at that point the solidarity memorandum was not signed, the government did receive de jure and de facto support of the parliamentary majority in its pursuit of reform. The support was endorsed by the Constitutional provision that «the issue of accountability of the Cabinet of Ministers of Ukraine may not be debated by the Verkhovna Rada of Ukraine more than once during one session, and within one year after the approval of the Program of Action of the Cabinet of Ministers of Ukraine,» article 87 of the Constitution reads. Hence, the government's «immunity» was granted by the MPs' votes in April 2000. In addition to the «immunity» (the government as a whole but not its individual members) the government received support (sometimes forced upon the parliament by the President) in adoption of the zero-deficit budget, the privatization program and a number of key bills demanded by the Cabinet.

The idea of a memorandum was brought back to the agenda in early February 2001, when Prime Minister Yushchenko consulted with parliamentary factions about a possibility to form a coalition government, but in the context of establishment of a «working group for preparing a memorandum on solidarity responsibility of the government and the parliament for the pursuit of reform» (Holos Ukrainy, February 8, 2001). A peculiar feature of the would-be political deal between the government and the legislature, i.e., the memorandum, is the desire to have it signed almost five years after the adoption of the Constitution that determined the whole framework for relations between the two branches. From this point the tentative agreement looks like primarily a political act bearing no legal implications but full of potential political consequences related to the «coordination» process. Apparently, decision-makers are well aware of these weaknesses of the proposed deal. President Kuchma is also not very enthusiastic about it. «So far it has been unclear what the agreement between the government and the Verkhovna Rada is all about,» he said, arguing that the Constitution does not mention anything like that document and, therefore, «it will not have any legal meaning, and the parties will bear no responsibility» under it (Uriadovyi Kurrier, April 5, 2001).

However, even notwithstanding the obvious political features of the developments, far from all factions are eager to take part in the establishment of «solidarity responsibility», while most of them agree to it on certain conditions only. On April 2, for instance, the Trudova Ukraine issued a statement that it would have to refrain from signing the political agreement between the parliament and the government because the draft document had not taken into account the demand for mandatory re-registration of members of the parliamentary majority. The faction argued that prior to signing the agreement on behalf of the majority it was necessary to find out clearly and unequivocally who exactly belonged to the majority, who wished to be practically involved in creating a system of effective interaction between the Cabinet and the parliament, and who was simply playing political games with both of the branches. Recently, the «situational phenomenon, shameful for the very idea of creation of the parliamentary majority, could be observed» (UNIAN, April 2, 2001).

President Kuchma seems to share the opinion about the «breakup of the majority», but interprets it in the context of his own political future: «the majority has been broken up by the so-called pro-government factions during the so-called tape scandal. Those are the actions of the some program of making the President resign as soon as possible,» Kuchma stated. In order to «create a capable part of the parliament» it is necessary to re-register the majority, Kuchma believes: «let the politicians in the parliament first decide who they are and who they stick to, and then one can get down to the negotiation table» (Uriadovyi Kurrier, April 5, 2001).

Hence, one of the key conditions was to check the ranks and find out if the majority existed at all. The re-registration was initiated by the SDPU(o) and the PDP factions, as well as members of the Trudova Ukraine and the Vidrodzhennya Rehioniv (that recently has changed its «brand name» for that of the mother party, the Democratic Union). The pro-government factions viewed the proposal as an excuse not to sign the political agreement between the parliament and the government. «The reason for that is the fact that the agreement contains certain guarantees of the government's activity; therefore, certain forces will continue seeking new excuses in order not to sign the agreement,» Victor Pynzenyk argued.

Victor Yushchenko expressed some well-founded reservations about the re-registration idea, arguing that «after the re-registration the majority will be smaller» (Interfax-Ukraine, April 5, 2001) and, hence, the majority might simply lose its status of the «majority». But since the decision was made in favor of re-registration, the process should go on, Yushchenko said.

The re-registration, formally started on April 4, was announced as a key condition for signing the agreement. «the decision to re-register the parliamentary majority emerged as a prerequisite for signing the agreement between the government and the parliament, and due to the need to find out the true number of members of the majority,» faction leaders argued. According to one of the leader of the Trudova Ukraine Igor Sharov, the majority's coordination council decided to «make a register the first page of which would contain conditions for creation of the majority adopted in January last year, and every MP will have to sign up in the register». The re-registration was supposed to be done in accordance with the Regulation on the Parliamentary Majority of the Verkhovna Rada of Ukraine and the Agreement on the establishment of the parliamentary majority. Noteworthy on April 4 the motivations were interpreted somewhat differently, focusing on political factors - in particular, the fact that some members of the majority had announced their opposition to President Kuchma. As majority coordinator Oleksandr Karpov put it, «the decision about re-registration concerns not as much the

agreement between the government and the parliament as the issue of the majority's ability to perform.» He added that «inside the majority there were representatives of the National Salvation Forum, other deputies that belong to opposition structures», and that «this is not the way it can be» *UNIAN, April 4, 2001).

«Yes it can,» NSF members in the majority replied. One of the NSF leaders Volodymyr Filenko was the first person to sign in the register.

By the end of the day of April 4 it was announced that the joint statement on re-registration of their factions had been signed by leaders of the Reforms-Congress (Victor Pynzenyk), People's Rukh of Ukraine (Hennady Udovenko) and the Ukrainian People's Rukh (Yuri Kostenko). They stressed that their choice was motivated by the efforts to preserve the Yushchenko government. According to Victor Pynzenyk, the parliamentary majority was «a certain element of compromise, but its collapse may destabilize the situation in Ukraine and cause the resignation of the government» (UNIAN, April 4, 2001). The pro-government motivation of the factions' decision to re-register is clear. The agreement on creation of the parliamentary majority and its basic provisions (which, by the way, has not changed since last year) was also signed by the Trudova Ukraina, the Democratic Union and members of the Agrarian party. Reportedly, all factions of the majority except Yulia Tymoshenko's Batkivshchyna are going to sign the document. If the Batkivshchyna drops out, the majority will shrink noticeably. However, given the Batkivshchyna's attitude to Yushchenko, it looks like the Prime Minister does not have to worry too much.

Anyway, the re-registration and bargaining over the agreement are in process. Given the complexity of the current situation between the branches of power, it is likely that speculations about the dismissal of the Yushchenko government may occupy a significant place in the debates. While the dismissal itself, most likely, will not occur, the government and the parliament may find themselves forced to find a compromise regarding the composition of the government and some other key offices - now or later. The agreement seems to depend on how many of some factions' interests will be taken into account by the executive branch, regardless of the fact whether the agreement is seen as legally and politically binding or not. If the deal is made, that one may conclude that all the parties involved have reached a compromise.

P.S. Recently, Prime Minister Yushchenko intrigued the press and observers by stating that a new vice prime minister was due to take office shortly, but refusing to give the name. Besides, how many vice prime ministers and other top-tanking positions may Ukraine need?